

**AMENDMENT 1 TO  
DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

|                           |  |
|---------------------------|--|
| CONDOMINIUM PROJECT NAME: | KEANU KAI  |
| PROJECT ADDRESS:          | 44-295 Kaneohe Bay Drive<br>Kaneohe, Hawaii 96744  |
| REGISTRATION NUMBER:      | 7328 (Partial Conversion)  |
| EFFECTIVE DATE OF REPORT: | <b>May 6, 2014</b>   |
| THIS AMENDMENT:           | <input checked="" type="checkbox"/> Must be read together with<br><input checked="" type="checkbox"/> Developer's Public Report dated <u>April 11, 2013</u><br><input type="checkbox"/> Amended Report dated _____<br><br><input type="checkbox"/> Supersedes all prior amendments: Includes all prior amendment(s) and <u>must</u> be read together with<br><input type="checkbox"/> Developer's Public Report dated _____<br><input type="checkbox"/> Amended Report dated _____ |
| DEVELOPER(S):             | FSS LLC, a Hawaii limited liability company  |

**Preparation of this Amendment**

The Developer prepared this amendment pursuant to the Condominium Property Act, Section 514B-56, Hawaii Revised Statutes (HRS), as amended from time to time. Section 514B-56, HRS, requires that after the Commission has issued an effective date for the Developer's Public Report, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the Developer's Public Report, or if the developer desires to update or change the information set forth in the Developer's Public Report, the developer shall immediately submit to the Commission an amendment to the Developer's Public Report or an amended Developer's Public Report clearly reflecting the change, together with such supporting information as may be required by the Commission, to update the information contained in the Developer's Public Report.

The law defines "material change" as used in parts IV and V of Chapter 514B, HRS means any change that directly, substantially, and adversely affects the use or value of (1) A purchaser's unit or appurtenant limited common elements; or (2) Those amenities of the project available for the purchaser's use.

The law defines "pertinent change" to mean, as determined by the commission, a change not previously disclosed in the most recent public report that renders the information contained in the public report or in any disclosure statement inaccurate, including, but not limited to (1) The size, construction materials, location, or permitted use of a unit or its appurtenant limited common element; (2) The size, use, location, or construction materials of the common elements of the project; or (3) The common interest appurtenant to the unit. A pertinent change does not necessarily constitute a material change.

The filing of an amendment to the Developer's Public Report or an amended Developer's Public Report, in and of itself, shall not be grounds for a purchaser to cancel or rescind a sales contract. A purchaser's right to cancel or rescind a sales contract shall be governed by sections 514B-86 and 514B-87, HRS, the terms and conditions of the purchaser's contract for sale, and applicable common law.

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*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2643 to submit your request.*

This Amendment has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this amendment to the Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts, material changes, or pertinent changes about the project have been fully or adequately disclosed; and (3) is not the Commission's judgment of the value or merits of the project.

The law defines "material facts" to mean any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale.

This amendment may be used by the Developer for promotional purposes only if it is used with the last Developer's Public Report in its entirety.

Prospective purchasers and purchasers are encouraged to read this amendment carefully and to seek professional advice.

Summary of Changes from Earlier Developer's Public Report are Described Beginning on the Next Page

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Summary of Changes from Earlier Developer's Public Report:

This summary contains a general description of the changes, if any, made by the developer since the last Developer's Public Report was issued an effective date. It is not necessarily all inclusive. Prospective purchasers and purchasers must read this amendment together with the last Developer's Public Report with the effective date as noted on the top of page 1 if they wish to know the specific changes that have been made.

Changes made are as follows (include a description of what the change is and page number and or exhibit alphabet or number; additional pages may be used):

The Project's Declaration and Condominium Map were amended to reflect changes to the boundaries of the common element and limited common elements of the Project to allow for the construction of walls and other improvements. See revised page 10 and Exhibits D, E and G.

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Changes continued:

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**The Developer declares subject to the penalties set forth in Section 514B-69, HRS that this project continues to conform to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and 32(a) (13), HRS.**

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report as amended, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Section 1.15 of this report as amended, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

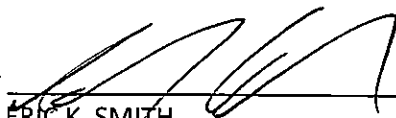
The Developer hereby certifies that all the information contained in this report as amended and the exhibits attached to this report (if any) as amended and all documents to be furnished by the Developer to purchasers concerning the project have been reviewed by the Developer and are, to the best of the Developer's knowledge, information and belief, true, correct and complete. The Developer hereby agrees promptly to amend this report as amended to report and include either or all material facts, material or pertinent changes to any information contained in or omitted from this report and to file annually a report to update the material contained in this report as amended at least 30 days prior to the anniversary date of the effective date of this report.

FSS LLC, a Hawaii limited liability company

By SMITH/FOTI DEVELOPMENT LIMITED PARTNERSHIP,  
a Hawaii limited partnership  
Its Managing Member

By SMITH/FOTI DEVELOPMENT, INC., a Hawaii Corporation  
Its General Partner

By

  
ERIC K. SMITH

Its President and Treasurer

Dated: April 28, 2014

Distribution:

Department of Finance, City and County of Honolulu

Planning Department, City and County of Honolulu

**\*Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.**

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### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

The Declaration of Condominium Property Regime contains a description of the land, buildings, units, common interests, common elements, limited common elements, and other information relating to the condominium project.

| Land Court or Bureau of Conveyances | Date of Document  | Document Number |
|-------------------------------------|-------------------|-----------------|
| Bureau of Conveyances               | November 29, 2012 | A-47170817      |

##### Amendments to Declaration of Condominium Property Regime

| Land Court or Bureau of Conveyances | Date of Document  | Document Number |
|-------------------------------------|-------------------|-----------------|
| Bureau of Conveyances               | February 24, 2014 | A-51710680      |
| Bureau of Conveyances               | April 9, 2014     | A-52120675      |
|                                     |                   |                 |
|                                     |                   |                 |

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters that affect how the condominium project will be governed.

| Land Court or Bureau of Conveyances | Date of Document  | Document Number |
|-------------------------------------|-------------------|-----------------|
| Bureau of Conveyances               | November 29, 2012 | A-47170818      |

##### Amendments to Bylaws of the Association of Unit Owners

| Land Court or Bureau of Conveyances | Date of Document | Document Number |
|-------------------------------------|------------------|-----------------|
|                                     |                  |                 |
|                                     |                  |                 |
|                                     |                  |                 |
|                                     |                  |                 |

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

|                                  |      |
|----------------------------------|------|
| Land Court Map Number            |      |
| Bureau of Conveyances Map Number | 5141 |

Dates of Recordation of Amendments to the Condominium Map:

**EXHIBIT D**  
**Common Elements**

Article 4 of the Declaration, as amended, states:

“One freehold estate is also designated in all the portions of the Project other than the Units. Such are referred to as “**common elements**.” The common elements include, but are not limited to:

4.1     **Land.** The Land in fee simple;

4.2     **Utility Lines and Retaining Walls.** Any pipes, wires, ducts, conduits or other utility or service lines, drainage ditches or appurtenant drainage structures and retaining walls (if any), which are located outside the Units and which are utilized for or serve more than one Unit;

4.3     **Fences and Walls.** Any fences and walls that are located on the boundaries separating the Dwelling Areas appurtenant to two or more of the Units;

4.4     **Common Driveway.** That portion of the Land shown on the site map portion of the Condominium Map as “Common Driveway 9,610 Sq. Ft”. ”

**END OF EXHIBIT D**

**EXHIBIT E**  
**Limited Common Elements**

Article 5 of the Declaration, as amended, states:

**“5.1 Generally.** (a) Certain parts of the common elements, referred to as **“limited common elements,”** are designated and set aside for the exclusive use of certain (but not all) of the Units. Each Unit or Units has appurtenant thereto exclusive easements for the use of such limited common elements set aside and reserved for such Unit’s or Units’ exclusive use.

(b) Unless otherwise specified, all costs of every kind pertaining to a limited common element, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be paid for by the Owner of the Unit or Units to which such limited common element is or are appurtenant.

**5.2 Limited Common Elements for Unit 1.** The limited common elements so set aside and reserved for the exclusive use of Unit 1 are as follows:

(a) The site on which Unit 1 is located, consisting of the land area beneath and immediately adjacent to Unit 1 (including the airspace above such site), as shown and delineated on the site map portion of the Condominium Map as 9,547 square feet (which may be referred to as **“Dwelling Area 1”**);

(b) A mailbox to be designated by Declarant for the use of Unit 1.

**5.3 Limited Common Elements for Unit 2.** The limited common elements so set aside and reserved for the exclusive use of Unit 2 are as follows:

(a) The site on which Unit 2 is located, consisting of the land area beneath and immediately adjacent to Unit 2 (including the airspace above such site and the swimming pool, as shown on the site map portion of the Condominium Map), as shown and delineated on the site map portion of the Condominium Map as 10,149 square feet (which may be referred to as **“Dwelling Area 2”**);

(b) A mailbox to be designated by Declarant for the use of Unit 2.

**5.4 Limited Common Elements for Unit 3.** The limited common elements so set aside and reserved for the exclusive use of Unit 3 are as follows:

(a) The site on which Unit 3 is located, consisting of the land area beneath and immediately adjacent to Unit 3 (including the airspace above such site), as shown and delineated on the site map portion of the Condominium Map as 10,695 square feet (which may be referred to as **“Dwelling Area 3”**);

(b) A mailbox to be designated by Declarant for the use of Unit 3.

**5.5 Limited Common Elements for Unit 4.** The limited common elements so set aside and reserved for the exclusive use of Unit 4 are as follows:



(a) The site on which Unit 4 is located, consisting of the land area beneath and immediately adjacent to Unit 4 (including the airspace above such site), as shown and delineated on the site map portion of the Condominium Map as 11,060 square feet (9,295 square feet) (which may be referred to as "**Dwelling Area 4**");

(b) A mailbox to be designated by Declarant for the use of Unit 4.

[The "net" area in parentheses is the gross area (11,060 square feet) less the areas of the easements in favor of others that burden Dwelling Area 4 (i.e., Driveway Extension Easement (623 square feet) and Pedestrian Easement (1,142 square feet)).]

5.6 **Other Limited Common Elements.** Any other common element of the Project which is rationally related to fewer than all the Units is a limited common element appurtenant to and for the exclusive use of such Unit or Units to which it is rationally related."

Note:

(a) The total area of the Project can be calculated by adding up the areas of the Common Elements (i.e., Common Driveway (9,610 square feet)) and Limited Common Elements (i.e., Dwelling Area (9,547 square feet), Dwelling Area 2 (10,149 square feet), Dwelling Area 3 (10,695 square feet) and Dwelling Area 4 (11,060 square feet)).

(b) The "Dwelling Areas" herein described are not legally subdivided lots.

**END OF EXHIBIT E**

**EXHIBIT G**  
**Encumbrances Against Title**

1. Title to all minerals, and metallic mines reserved to the State of Hawaii.
2. Any adverse claim based upon the location of the seaward boundary and/or the shoreline setback line of the herein described property, as may be established under the laws of the State of Hawaii.
3. LEASE OF RIGHT OF WAY in favor of HAWAIIAN ELECTRIC COMPANY, INC. and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as Hawaiian Telcom, Inc., dated December 15, 1966, recorded in the Bureau of Conveyances, State of Hawaii, in Book 5608, Page 279, leasing and demising a right and easement to build, construct, rebuild, reconstruct, repair, maintain and operate pole and wire lines and/or underground lines for the transmission of electricity for a term commencing on December 15, 1966 and terminating December 31, 2020.
4. GRANT OF EASEMENT to CITY AND COUNTY OF HONOLULU, dated January 24, 1969, recorded in the Bureau of Conveyances, State of Hawaii, in Book 6435, Page 390, granting an easement to construct, reconstruct, install, maintain, operate, repair and remove an underground sewer pipe line or pipe lines, etc., through, under and across a portion of the land described herein, said easement being more particularly described as follows:

PARCEL 65 – of Kaneohe Bay Drive Interceptor Sewer:

All that certain parcel of land over and across a portion of Lot 11 (Panahaha Subdivision), being also a portion of Royal Patent 5583, Land Commission Award 2937, Part 10, Section 3 to William Harbottle, situate at Panahaha, Kaneohe, Koolauoko, Oahu, Hawaii, and more particularly described as follows:

Being an easement ten (10) feet wide and extending five (5) feet on each side of the following described centerline:

Beginning at the Southwesterly end of said centerline on the Northeasterly boundary of Lot 10 (Panahaha Subdivision), the coordinates of said point of beginning referred to Government Survey Triangulation Station "Coolidge" being 8,169.28 feet North and 15,725.09 feet East, as shown on Division of Land Survey and Acquisition Parcel Map File No. 12-4-3-44, thence running by azimuths measured clockwise from true South:

1.      251°    58'                      98.79                      feet to the Southwesterly boundary of Lot 12 (Panahaha Subdivision) and containing an area of 988 square feet, more or less.
5.      Agreement for ENCROACHMENT dated May 3, 2000, recorded May 8, 2000 in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-062565.
6.      Agreement for ENCROACHMENT (CRM Wall) dated November 6, 2009, recorded November 20, 2009 in the Bureau of Conveyances, State of Hawaii, as Document No. 2009-178435.

7. Any rights, interests or claims which may exist or arise by reason of the facts shown on a survey plat prepared by Dan Akita, Licensed Professional Land Surveyor, Certificate No. 12749, on July 22, 2011, designated Job No. ---, as follows:

A) A concrete pad with a fire hydrant along Kaneohe Bay Drive crosses into the subject lot for a maximum distance of 0.9' and a length of 6.0'.

B) A CRM wall, with wooden fence above, along the Southeast property line crosses into Unit 2 of Banyan Cove (CPR Map No. 1660) for a maximum distance of 0.8 feet and length of 106'.

C) A CRM wall, with wooden fence above, along the East property line crosses into Unit 3 of Banyan Cove (CPR Map No. 1660) for a maximum distance of 1.0' and length of 118'. Encroachment Agreement dated May 8, 2000, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-62565.

D) A CRM wall, with wooden fence above, along the East property line crosses into Unit 4 of Banyan Cove (CPR Map No. 1660) for a maximum distance of 1.3' and length of 38.2'. Encroachment Agreement dated November 20, 2009, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2009-178435.

E) A CRM wall, with wooden fence above, along the Northeast property line crosses into Unit 5 of Banyan Cove (CPR Map No. 1660) for a maximum distance of 0.6' and a length of 135.9'.

8. Any rights, interests or claims which may exist or arise by reason of the facts shown on a survey plat prepared by Dan Akita, Licensed Professional Land Surveyor Certificate No. 12749, on July 22, 2011, designated Job No. ---, as follows:

A) A CRM wall along the Southwest property line crosses into Lot 10-B for a maximum distance of OS and a length of 18.3'.

B) A CRM wall, with wooden fence above, along the Southeast property crosses into Unit 1 of Banyan Cove (CPR Map No. 1660) for a maximum distance of OS and length of 98.3'.

C) A CRM wall, with wooden fence above, along the Northeast property line crosses into Unit 4 of Banyan Cove (CPR Map No. 1660) for a maximum distance of OS and a length of 21.1'. Encroachment Agreement, dated November 20, 2009, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2009-178435.

FURTHER NOTE: The matters shown above would appear to fall within the definition of a "de minimis structure position discrepancy" pursuant to HRS Section 669-11 through 669-13, however, no assurance is provided regarding the accuracy of the survey nor the interpretation of said statute.

9. Mortgage in favor of FIRST HAWAIIAN BANK, a Hawaii corporation, dated July 24, 2012, recorded August 10, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-460S0295.

AMENDMENT thereof by instrument recorded February 28, 2013 in the Bureau of Conveyances, State of Hawaii, as Document No. A-48070200.

10. Condominium Map No. 5141, filed in the Bureau of Conveyances, State of Hawaii. Said Map was amended by instrument recorded February 27, 2014.

11. Matters in an instrument that, among other things, contain or provide for easements, assessments, liens and their subordination; provisions relating to partition, restrictions on severability of component interest, covenants, conditions and restrictions, provision that no violation thereof and no enforcement of any lien provided for therein shall defeat or render invalid the lien of a mortgage or deed of trust made in good faith and for value, but omitting any covenants or restrictions if any, based upon race color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, entitled Declaration of Condominium Property Regime, recorded November 30, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-47170817.

Said Declaration was amended by the following instruments:

(A) Recorded February 27, 2014 as Document No. A-51710680.

(B) Recorded April 9, 2014, as Document No. A-52120675.

12. By-Laws of the Association of Unit Owners of KEANU KAI recorded November 30, 2012 in the Bureau of Conveyances, State of Hawaii, as Document No. A-47170818.

13. ABSOLUTE ASSIGNMENT OF RENTALS AND LESSOR'S INTEREST IN LEASES, dated February 14, 2013, recorded February 28, 2013 in the Bureau of Conveyances, State of Hawaii, as Document No. A-48070201.

14. Financing Statement (UCC-1), recorded February 28, 2013 in the Bureau of Conveyances, State of Hawaii, as Document No. A-48070202.

15. AFFIDAVIT, recorded September 4, 2013 in the Bureau of Conveyances, State of Hawaii, as Document No. A-49950576.

16. AFFIDAVIT, recorded September 4, 2013 in the Bureau of Conveyances, State of Hawaii, as Document No. A-49950577.

17. GRANT OF EASEMENT to HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation, recorded on February 19, 2014 in the Bureau of Conveyances, State of Hawaii as Document No. A-51630335, for utility purposes.

MORTGAGEE'S CONSENT thereto by FIRST HAWAIIAN BANK, a Hawaii corporation, recorded February 25, 2014 in the Bureau of Conveyances, State of Hawaii as Document No. A-51690244.

**END OF EXHIBIT G**